

TITLE VI GUIDE GENERAL INFORMATION

Title VI of the Civil Rights Act of 1964 provides:

“No person in the United States shall, on the grounds of **race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried out under this title.”

The Federal-Aid Highway Act of 1973 added **sex** to the list of prohibitive factors. **Disability** was added through Section 504 of the Rehabilitation Act of 1973. **Age** was subsequently added in 1975 under the Age Discrimination Act.

Recipient vs. Beneficiary:

Title VI applies to direct recipients of Federal assistance as well as subrecipients. There is a distinction between a recipient and a beneficiary. A “recipient” receives Federal financial assistance and/or operates a “program or activity.” A recipient may in turn distribute the Federal assistance to a subrecipient to carry out a program. A “beneficiary” is an individual and/or entity that directly or indirectly receives an advantage through the operation of a Federal program; however they do not enter into any formal contract or agreement with the Federal government where compliance with Title VI is a condition of receiving the assistance. A subrecipient of Federal assistance must follow the same Title VI requirements as a recipient; e.g., they must have a Title VI Plan. Beneficiaries, however, do not.

In determining whether an entity is a subrecipient, and therefore subject to Title VI requirements, a key factor is whether the Federal funds actually pass through the Idaho Transportation Department (ITD) to the other entity for operation of a “program or activity.” MPO’s are considered subrecipients as they receive Metropolitan Planning funds through ITD to operate their respective planning programs. Similarly, if funds were passed through to a city, county, highway district or other entity to manage a program or to award and oversee a Federal-aid project, that entity could be considered a subrecipient. If a local agency is simply providing the match on a Federal-aid project, it would be considered a beneficiary.

Types of Discrimination:

There are basically two types of discrimination that are prohibited under Title VI and related statutes. The first is **intentional discrimination/disparate treatment**. An intent claim alleges that similarly situated persons are treated differently because of their race, color, national origin, sex, disability, or age. To prove such discrimination requires a showing that the decision maker was not only aware of the complainant’s race, color, national origin, sex, disability, or age, but that decisions were made (at least in part) because of one or more of those factors.

General Information, Continued

The second type of discrimination is **disparate impact/effects**, which occurs as a result of a neutral procedure or practice, and such practice lacks a “substantial legitimate justification.” The focus is on the consequences of a recipient’s practices rather than the recipient’s intent. Courts have often found Title VI disparate impact violations in cases where recipients utilize policies or practices that result in fewer services or benefits, or inferior services or benefits, to members of a protected group. When reviewing such cases, a determination is made as to whether there is a substantial legitimate justification for the challenged practice and whether there exists an alternative that is comparably effective with less of a disparate impact.

TITLE VI STATE DOT ROLES AND RESPONSIBILITIES

Minimum Requirements (per regulation):

1. Develop State assurances in accordance with Title VI. [23 CFR §200.9(a)(1)]
2. Take affirmative action within 90 days to correct any deficiencies found by FHWA. [23 CFR §200.9(a)(3)]
3. Establish a Civil Rights Office and designate a coordinator who has a responsible position in the organization and direct access to the head of the State DOT. The coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports. [23 CFR §200.9(b)(1)]
4. Adequately staff the Civil Rights Office to effectively implement the State civil rights requirements. [23 CFR §200.9(b)(2)]
5. Develop procedures for prompt processing and disposition of Title VI and Title VII complaints. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to FHWA within 60 days of the date the complaint was received by the State. [23 CFR §200.9(b)(3)]
6. Develop procedures for the collection of statistical data of participants in, and beneficiaries of, State transportation programs. [23 CFR §200.9(b)(4)]
7. Develop a procedure to conduct annual Title VI reviews of program areas to determine the effectiveness of program area activities at all levels. Conduct annual reviews of special emphasis program areas to determine effectiveness. [23 CFR §200.9(a)(4), 23 CFR §200.9(b)(5), (6), (13)]
8. Conduct Title VI reviews of subrecipients of Federal-aid highway funds. [23 CFR §200.9(b)(7)]
9. Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements. [23 CFR §200.9(b)(8)]
10. Conduct training programs on Title VI and related statutes for State program officials. [23 CFR §200.9(b)(9)]
11. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year. [23 CFR §200.9(b)(10), (11)]

Minimum Requirements, Continued

12. Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English. [23 CFR §200.9(b)(12)]
13. Establish procedures to identify and eliminate discrimination when found to exist. [23 CFR §200.9(b)(14)]

NOTE: The State DOT is responsible for ensuring compliance with Title VI for all Federal financial assistance received, including funds “passed through” to subrecipients. Therefore, it might be in the State’s best interests to develop a Memorandum of Understanding (MOU) with subrecipients requesting that they utilize ITD’s Title VI Plan (as opposed to developing a separate one).

Required Elements of Title VI Plans:

1. Statement of State DOT policy on Title VI (must be signed by the Director).
2. Description of the organization and staffing of the Civil Rights Office, an organizational chart which shows the relationship of the Civil Rights Office to the head of the State DOT, and an organizational chart of the Civil Rights Office showing names and titles.
3. For each of the major program areas listed below, description of how Title VI monitoring will be accomplished by the Title VI coordinator and by the program area personnel.
 - Planning
 - Project development
 - Right-of-way
 - Construction
 - Research
4. Enforcement procedures to be followed in the event of a State DOT’s noncompliance with Title VI. Also, sanctions to be applied by the State DOT in the event of a subrecipient or contractor’s noncompliance with Title VI.
5. Copy of the State’s signed Title VI assurances.
6. List of all procedures, manuals, and directives that the State DOT uses which are applicable to the Federal-aid highway program and Title VI.

TITLE VI ISSUES THAT IMPACT THE PLANNING PROCESS OF FEDERAL-AID PROJECTS

A. General

There are various analyses and studies that are completed in the process of developing an efficient transportation plan. The statewide transportation planning process produces long-range, intermodal, statewide transportation plans and short-range programs of projects. The decision-making effort for this process is open for input from a variety of participants and any others who wish to be involved. The short-range program of projects is called a Statewide Transportation Improvement Program (STIP) and must include at least all projects with proposed funding by Title 23 or FTA funds. States have the primary responsibility for preparing and maintaining the statewide plan and the STIP.

Just like the statewide planning process, the metropolitan planning process must produce a long-range plan and Transportation Improvement Program (TIP) that includes at least all projects that are to be Title 23 or FTA-funded, and all others involving an FHWA or FTA approval action. Metropolitan planning organizations (MPOs) have the primary responsibility for preparing and maintaining their long-range plan and TIP.

B. Potential Title VI Issues and Suggested Actions to Address Concerns

Plans and programs have the potential of being discriminatory in more subtle ways than projects. The major area of impact by plans and programs is through decisions that identify one or more planned improvements over other options. This consequence may result from procedures and processes that shut a group out of the process, or from the failure to consider the impacts of various transportation system alternatives and programs of projects on one or more identified groups. To the extent that plans and programs include proposed improvements with disproportionate beneficial impacts or reflect decision processes that exclude certain groups, the long-term agenda for transportation improvements may be inappropriately biased. This could lead to project implementation that is inconsistent with nondiscrimination requirements.

Issues:

1. Whether there is effective public involvement participation.

Public involvement is a key source of input for planning and programming decisions during the planning process. Inadequate efforts to reach and involve all groups during the planning process can result in denying a particular group(s) (e.g., minorities, elderly, low income) the opportunity to participate in public decisions on transportation systems and projects directly affecting them.

Planning Process Issues, Continued

Statewide and metropolitan planning staff responsible for public involvement should review the public involvement process operation in terms of applicable group participation. The public involvement effort should be sensitive to the following questions and information:

- Are appropriate media (such as minority publications) included in all notification processes for public meetings or public review of agency documents?
- Are contacts with affected groups or leaders used appropriately to identify information needs and planning/programming issues of concern? Focus group discussions are also useful in exploring issues in depth.
- Is technical information available in formats and at places and times conducive to review by affected persons? This may require provision of information to sight-impaired persons, non-English speakers, or to persons without extensive formal schooling.
- Are persons traditionally underserved by transportation systems such as low-income or minorities actively sought out for involvement? This active effort goes beyond merely offering a passive opportunity to comment to those who see a notice in a newspaper of general circulation. Often, it is necessary to translate bureaucratic documents into lay language and to describe why minorities and other groups should be interested in participation. Another effective approach is to use a neutral facilitator to encourage minority persons at public meetings to participate actively. Some MPOs have used minority citizen advisory committees to foster minority participation. Meetings held in minority areas in the evening encourage minority attendance at far higher levels than meetings in downtown offices during the day.
- Do meeting formats encourage participation by all affected persons/groups? Less formal meetings are far less intimidating, e.g., circulating at an open house and asking agency staff one-on-one about plans or programs. Informal discussions provide information tactfully to persons who read with difficulty. Contribution of comments in one-on-one settings facilitates commenting by all, including minorities.

Suggested actions:

- ✓ Recognize unique and/or key community context;
- ✓ Obtain participation from those directly impacted;
- ✓ Contact minority community leaders, organizations, media;
- ✓ Consider availability of information (time, place, language, educational level);
- ✓ Conduct adequate number of meetings and hearings;
- ✓ Utilize citizen advisory committees; and
- ✓ Ensure appropriate meeting location, time, day of week, and atmosphere.

Planning Process Issues, Continued

2. Whether input from all affected persons/groups is seriously considered.

Failing to seriously consider comments by all affected groups/persons may be discriminatory. When public agencies receive comments towards the end of the plan or TIP preparation, members of the public may feel that commenting is futile because the agency position is obvious. Consequently, comments tend to be very critical and unconstructive. On the agency side, there is commitment to the work invested in draft plans and programs. In responding to comments, agencies then tend to focus on explaining why public comments cannot be implemented. Collaborative task forces are effective ways to reassure public citizens that they can influence decision-making. The use of newsletters is also an effective medium to provide information to minority communities or groups on how past input has been considered and to continue soliciting their involvement.

Suggested actions:

- ✓ Actively demonstrate consideration of community input via newsletters, letters, leaflets, or whatever medium that will potentially reach the target group/audience.

3. Whether there is coordination with Indian tribal governments.

The projects that usually have the greatest potential for discriminatory impacts are those within metropolitan areas that involve large numbers of relocations and/or community disruption. However, rural projects also have potential for discrimination. Users of the system, rural or metropolitan, may be adversely impacted by its development, operation, and/or maintenance. Hence, it is very important that special efforts are made to reach out to those segments of society that have been traditionally underserved during the planning process to secure their input.

It is necessary for States and MPOs to provide opportunity for active involvement of Indian tribal governments in statewide and metropolitan transportation planning and programming. However, when planning for the involvement of Indian tribal governments, it is important for agency staff to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of tribal governments. Tribal governments should be actively solicited to participate in the development of metropolitan and State plans and programs as independent government bodies rather than as specific minority groups. The coordination activities with Indian tribal governments should reflect the following:

- Early involvement.
- Timely information exchange.
- Adequate notice.
- Consideration of input.

Planning Process Issues, Continued

Suggested actions:

- ✓ Establish effective relationships with Indian tribal governments;
- ✓ Increase knowledge of Indian tribal customs and laws that govern their various sovereign nations.

4. Whether data collection/analysis is adequate.

The information that is collected and analyzed during the planning process is critical to the development of studies and the decisions that are to be reached during project development. It is essential that data collection and analysis reflect the metropolitan area and appropriately address:

- Community boundaries.
- Racial and ethnic makeup.
- Income levels, property taxes, etc.
- Community services, schools, hospitals, shopping areas.

A U. S. Census website that provides a variety of demographic information can be accessed at: <http://www.esri.com/data/online/tiger/usdemoq.html>

Suggested actions:

- ✓ Design forms, surveys, and other data collection methods to obtain the following information:
 - Description of community boundaries;
 - Racial/ethnic makeup;
 - Income levels, tax base;
 - Community services, schools, hospitals, shopping, public safety;
 - Transportation service availability and accessibility.
- ✓ Assess how project priorities, impacts and benefits are addressed.

5. Whether Social, Economic, and Environmental (SEE) effects and impacts have been identified and described.

In order to ensure a balanced view of the SEE effects of the planning process, the utilization of a systematic interdisciplinary approach is recommended. The use of a coordinated effort by various disciplines working together can more easily identify all the SEE effects and propose possible mitigation options to minimize the adverse impacts. The thrust of the overall decision-making process is making transportation decisions that are sensitive to and address community impacts.

Planning Process Issues, Continued

Suggested actions:

- ✓ Employ a systematic interdisciplinary approach;
- ✓ Utilize effective public involvement techniques such as minority citizen advisory committees.

6. Whether contracting opportunities for planning studies, corridor studies, or other work have been provided to all interested parties.

Consultants may be hired to conduct planning studies, corridor studies, or other highly technical work. Efforts should be made to ensure that minority and women-owned businesses have opportunities to bid on and undertake these studies.

Suggested actions:

- ✓ Solicit all qualified parties, including minority and women-owned businesses and minority institutions of higher education. Minority and women-owned businesses can be identified through ITD's monthly Disadvantaged Business Enterprises (DBE) newsletter or by visiting ITD's website at: <http://www2.state.id.us/itd/civil>

ITD's solicitation of consultants is done through the following FHWA approved methods:

- ITD Term Agreement Process, which identifies pre-approved consultant firms. These identified firms are updated every 2 years through a process that includes the solicitation of minority and women-owned businesses and minority institutions.
- Sub-recipients of federal funds have the option to utilize the Term Agreement list to select consultants for any project of \$250,000 or less, or use the individual project solicitation process. Sub-recipients with projects over \$250,000 must use the individual project solicitation process.

TITLE VI

ISSUES THAT IMPACT THE PROJECT DEVELOPMENT PROCESS OF FEDERAL-AID PROJECTS

A. General

The term “project development” refers to the process of a highway or transit project in which the environmental study necessary for the National Environmental Policy Act (NEPA) compliance is performed. The NEPA of 1969 is the foundation of the project development process as described in 23 CFR 771, the FHWA/FTA joint environmental regulation. The NEPA requires that all Federal agencies examine and disclose the possible and likely effects of their actions on the human environment. The FHWA uses the term “human environment” in its broadest sense to include neighborhoods, communities, and natural ecosystems. Effects on the human environment similarly include a broad array of impacts including direct physical effects to air, water, and land as well as less quantifiable effects, such as impacts to cultural resources, community life, and land-use patterns.

For highway projects, the State Departments of Transportation (DOTs) perform this analysis and prepare an environmental document with FHWA's assistance and oversight. Final approval of the process is the responsibility of the FHWA. Environmental compliance requires consideration of all possible social, economic, and environmental (SEE) effects of a proposed project and seeks to ensure that the decisions made are in the best public interest. During this process, data and information on project alternatives and related environmental effects are collected and analyzed. The goal of this process is to develop a complete understanding of the existing and future environmental conditions and the possible effects of a proposed project in order to make the best project decision in terms of meeting the intended transportation need, the goals of an area or community, and for protection and enhancement of the environment. Often the project decision requires that the project be modified to avoid or minimize impacts to sensitive resources identified during the environmental studies. At other times, mitigation measures are made part of the proposal. Furthermore, it is FHWA policy to seek opportunities to go beyond traditional mitigation and implement innovative enhancement measures to help the project fit harmoniously within the community and the natural environs.

Consideration of existing environmental conditions and the potential for a proposed project to negatively or positively affect or impact the human environment actually begins much earlier with the statewide and metropolitan planning processes (see discussion in section relating to planning). The project development process begins where planning ends and is continued through all other developmental phases such as final design and right-of-way acquisition.

Project Development Issues, Continued

Consideration of environmental effects is necessary for any project that proposes to use Federal funds, or which could require another action by the Administration (such as an Interstate system access approval) regardless of the size, type, cost, or purpose of the project. Different levels of environmental documentation and processing are available to satisfy the project development and NEPA compliance process for a particular project. The level of documentation or process selected depends on the significance of the environmental impacts that are directly or indirectly the result of a project. Documentation and processing options are referred to as "classes of actions" in the FHWA/FTA environmental regulation. They are Environmental Impact Statements (EIS) (Class I), Categorical Exclusions (CE) (Class ID), and Environmental Assessments (EA) (Class III).

B. Potential Title VI Issues and Suggested Actions to Address Concerns

The environmental study of project alternatives and impacts must include the consideration of mitigation measures for unavoidable impacts. Mitigation measures and other agreements that are made as part of the decision-making process must be documented and implemented. All projects and environmental studies, whether an EIS, CE, or EA, must include mitigation for environmental impacts regardless of significance. Environmental commitments such as noise barriers, joint-use facilities, replacement housing, and others should be monitored to assure that these mitigative measures are included in the design plans and construction of the project. Mitigation measures are provided to minimize the adverse impacts of a project. Examples of adverse impacts include disruption of community cohesion; disruption of the availability of facilities and services; disruption of people, businesses and farms; and changes in tax bases and property values. They may be identified in general terms during the planning process. Specific measures are identified in the environmental document during the project development phase and should be monitored during the remaining phases of the highway process. Some types of mitigative measures are as follows:

- Restoration of circulation and pedestrian patterns for disrupted communities.
- Provision of relocation assistance and advisory services, replacement housing and payments for moving displaced families and businesses.
- Provision for maximum retention of existing trees and shrubs included in grading plans for ramp areas and along right-of-way.
- Provision for last resort housing.
- Provision of traffic control.
- Improvements in traffic signalization and street lighting.
- Establishment of priorities for employment, training and contracting opportunities for residents of the affected community.
- Provision of noise barriers and buffer zones.
- Provision of landscaping.
- Functional replacement of publicly-owned facilities displaced by the project.
- Coordination with community development agencies to implement jointly funded initiatives.

Project Development Issues, Continued

Issues:

1. Whether public involvement was adequately solicited and considered.

The public involvement performance specifications appear in the FHWA regulations implementing the NEPA process (23 CFR 771.111(h)). The FHWA approves all State public involvement/public hearing procedures. The FTA has a different public involvement process under 23 CFR 771.111(i). Currently, the two agencies are discussing the possibility of revising the procedures to unify their environmental regulations to include public involvement. The chief difference between public involvement during planning/ programming and during project development is that a public hearing or the opportunity for a public hearing is required for certain projects as described in the regulations. Public hearings are scheduled late in project development just after release of the draft environmental impact statement or environmental assessment. This is before the decision-making reflected in the final environmental documents.

Just as in the planning and programming processes, the FHWA staff gives technical assistance to State DOTs during development of their public involvement processes. Approaches to ensure adequate participation by all affected groups are similar to those discussed in public involvement processes in statewide and metropolitan planning, with the exception that public involvement is not required during development of public involvement procedures under the NEPA process.

The required public hearing (or opportunity for a public hearing) has often focused too much attention on a single public involvement event. Many State DOTs have supplemented hearings with public meetings; however, meeting formats tended to be formal like a public hearing. Public involvement is far more effective if it is scheduled early and continuously during project development and contact with the public is kept informal. Many States now use the open-forum public hearing format in which people gather information through an informal open house and make comments for the record one-on-one to a recorder. Under this format, a far higher percentage of hearing attendees make comments than under the traditional public hearing format.

Suggested actions:

- ✓ Utilize an effective public involvement program during the planning stage and continue during the project development process to meet the needs of the particular community (e.g., minority, disabled, elderly);
- ✓ Use newsletters, speaker's bureaus, and media to provide a consistent flow of information on project development status;
- ✓ Provide opportunity for public hearing after release of the environmental document;
- ✓ Focus outreach on appropriate community to ensure involvement;
- ✓ Use informal contact which is more effective than a formal atmosphere for a public hearing;

Project Development Issues, Continued

- ✓ Experiment with informal open-forum public hearing formats; allowing one-on-one comments to a recorder.

2. Whether SEE impacts were adequately identified.

The treatment of impacts to individuals, neighborhoods, and communities in environmental documents sometimes does not allow decision-makers to focus on the issues of greatest concern to members of the community. As a result, avoidance, minimization, and mitigation strategies are not developed until after political action, administrative complaints, or lawsuits have focused attention and urgency on the real issues. Effective public involvement and agency coordination efforts can identify these concerns prior to the preparation of an environmental document so that appropriate analysis can be undertaken to assess the severity of the impacts and the potential for mitigation. The FHWA's 1996 handbook, *Community Impact Assessment: A Quick Reference for Transportation*, provides a framework for evaluating impacts to people.

Suggested actions:

- ✓ Identify beneficial impacts such as increased access to facilities/services and upgrading of affected communities;
- ✓ Identify adverse impacts such as:
 - diminished access to facilities/services;
 - disruption of community cohesion;
 - disruption of people, businesses, and farms;
 - changes in tax base and property values;
 - traffic;
 - noise;
 - relocation of residences and businesses; and
 - diminished quality of the water, air, or natural environment used by residents.
- ✓ Develop mitigation and enhancement strategies based on public involvement and agency coordination.

3. Whether the potential for disproportionate or discriminatory impacts has been adequately addressed.

Project teams sometimes think that because there is no discriminatory intent on the highway agency's part, it is self-evident that impacts of the various alternatives under consideration are not discriminatory or do not fall disproportionately on a particular segment of society. This can be a faulty assumption and can lead to misunderstandings and mistrust. Therefore, it is important to be aware of the signs that a potentially discriminatory situation might exist. Such signs include:

Project Development Issues, Continued

- Demographics profiles that show whether the impacted population has a concentration of minority and/or low-income individuals;
- A history of impacts from governmental projects on a particular minority group or community in the project area. This might include not only highways projects but other governmental projects as well; and
- Complaints or assertions of disproportionate impacts that are unveiled during public involvement activities.

Suggested actions:

- ✓ Develop community impact assessments that include compilation and analysis of demographic data, including breakdowns by characteristics protected under Title VI and related statutes;
- ✓ Become aware of other actions that have occurred in the impacted area and of how these actions were perceived by members of the community;
- ✓ Effectively utilize public involvement techniques to identify issues of discriminatory potential as early as possible in the project development process; and
- ✓ Study avoidance, minimization, mitigation, and enhancement strategies, working with the affected community on the specifics as a definite proposal begins to take shape.

TITLE VI
ISSUES THAT IMPACT THE RESEARCH PROCESS
OF FEDERAL-AID PROJECTS

A. General

State DOTs are encouraged to conduct transportation-related research projects that may be funded with Federal-aid funds. The research may be conducted by State personnel or contracted to universities or consultants who have the capabilities and staff to perform the research.

B. Potential Title VI Issues and Suggested Actions to Address Concerns

1. Whether there is diversification in the selection of consultant/universities.
2. Proposal/problem statement solicitation.

Suggested action: Solicit all qualified consultants and universities. Assess proposal/problem statements to ensure that barriers do not exist that restrict or limit competition.

TITLE VI ISSUES THAT IMPACT THE RIGHT-OF-WAY PROCESS OF FEDERAL-AID PROJECTS

A. General

While the project development phase is in progress, the right-of-way (ROW) phase is initiated. Certain activities, such as preparation of an abstract of title and consideration of hardship and protective buying, may be underway while the environmental documents are being processed. The design work must be finished, and if people are affected, relocation planning must be completed before proceeding with actions that will cause displacement. ROW functional activities include appraisal of all properties to be purchased, negotiation with the property owners, acquisition of the property, management of the property acquired, relocation of people and businesses, and the adjustment of utilities. Replacement housing must be made available to all displaced persons before FHWA authorizes advertising for construction bids. After ROW has been obtained and upon completion of the project development phase, the construction phase may begin.

B. Potential Title VI Issues and Suggested Actions to Address Concerns

Appraisal/Appraisal Review Issues:

1. Whether there is diversification in the use of appraisers.

Suggested action: Expand the pool of qualified fee appraisers through effective outreach techniques.

2. Whether the selection of comparable sales and rental properties reflects discrimination and stereotypes.
3. Whether adjustments to the comparable sales and rental properties reflect discrimination.
4. Whether there is consistency in the determination of severance/consequential damages.

Suggested action: Assess the quality of appraisal reviews and take any necessary actions to correct deficiencies/weaknesses (e.g., provide training to appraisers).

Negotiation/Acquisition Issues:

1. Whether every effort was made to negotiate for required property before filing condemnation.

Suggested action: Ensure compliance with regulatory requirements prior to institution of condemnation proceedings.

Right of Way Issues, Continued

- 2. Whether property owners were fully informed of their rights to receive just compensation for their property before any donation of such property.**

Suggested action: Ensure the parcel record documents the basis for donations and notification of entitlement to just compensation.

3. Whether the offer was made for the full amount of the review appraiser's determination of compensation.

Suggested action: Ensure consistency in the implementation of negotiation procedures.

4. Whether there is consistency in the application of minimum payment policy.

Suggested action: Ensure that policy is applied uniformly from project to project.

Relocation Advisory Assistance and Payment Issues:

1. Whether relocation advisory assistance was provided equitably and without discrimination to displaced individuals.
2. Whether the selection of comparable replacement housing is fair, consistent, and without discrimination.

Suggested action: Obtain feedback from displaced individuals; conduct appropriate needs assessment; conduct self-evaluations, etc.

3. Whether decent, safe, and sanitary inspection standards are consistently applied.

Suggested action: Ensure that standards are applied uniformly.

4. Adequacy of personal contacts.

Suggested action: Obtain feedback from displaced individuals.

Property Management Issues:

1. Whether the determination of rent amounts is equitable.

Suggested action: Ensure that determination is applied uniformly to all affected individuals.

Right of Way Issues, Continued

2. Whether the procurement of bids provides equal opportunity.

Suggested action: Solicit all qualified parties, including minority and women-owned businesses.

3. Whether the maintenance of rental properties on projects is adequate and consistently performed for all renters.

Suggested action: Self-evaluations; tenant feedback; referral services, etc.

TITLE VI ISSUES THAT IMPACT THE CONSTRUCTION PROCESS OF FEDERAL-AID PROJECTS

A. Title VI Federal-Aid Construction Contract Requirements

Federal-aid construction contracts must include provisions that require compliance with Title VI. The specific contract provision language is included in FHWA Form-1273. The specific provisions related to Title VI are covered under Sections II and III.

The provisions contained in FHWA Form-1273 are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all contracts as well as appropriate subcontracts and purchase orders. State DOTs are not permitted to modify the provisions of FHWA Form-1273. Minor additions covering State requirements may be included in a separate supplemental specification, provided they do not conflict with State or Federal laws and regulations and do not change the intent of the required contract provisions.

The FHWA Form-1273 provisions apply to all work performed on the contract including work performed by subcontract. The prime contractor is responsible for compliance with the FHWA Form-1273 requirements by all subcontractors and lower tier subcontractors. Failure to comply with the Required Contract Provisions may be considered as grounds for contract termination.

Section II - Nondiscrimination

The provisions of Section II of FHWA Form-1273 are derived from the basic statutory authority of Title VI of the Civil Rights Act of 1964, and are implemented by 23 CFR 200. Section II applies to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.

The provisions of Section II promulgate the Title VI mandate that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Through expansion of this mandate and the issuance of parallel legislation, sex, age, and disability were added to the list of prohibitive factors. The nondiscrimination provisions extend to the contractor's employment practices, solicitations for employment, selection of subcontractors and suppliers, and procurement of materials.

1. FHWA Form-1273 Sections II.1 - II.9

Section II.1 requires the contractor to have an Equal Employment Opportunity (EEO) policy that prohibits discrimination and provides for affirmative action in employment practices. The contractor shall adopt the following statement as his/her operating policy:

Construction Issues, Continued

"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action shall include: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

NOTE: Religion is not a protected class; it was inadvertently included in 23 CFR 200 and FHWA Form-1273.

Affirmative action is defined as a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur. Actions aimed at addressing under-representation of minorities and women are outlined in the "Sixteen Steps" in 41 CFR 60.

Section II.2 requires the contractor to have a designated EEO Officer who has the responsibility and authority to administer the contractor's EEO program.

Section II.3 requires all of the contractor's employees who have an active role in the hiring, supervision, or advancement of employees to be aware of, and to implement the contractor's EEO policy. In addition, it is required that employees, including applicants and potential employees, be informed of the contractor's EEO policy through posted notices, posters, handbooks, and employee meetings.

Section II.4 requires the contractor not to discriminate in his recruitment practices and to make an effort to identify sources for potential minority and women employees.

Section II.5 requires the contractor to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The contractor is to promptly investigate all alleged discrimination complaints.

Section II.6 requires the contractor to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women, and applicants, through such programs.

Section II.7 deals with labor unions in that the contractor is not, and cannot be, required to hire union employees; however, if the contractor relies on unions as a source of employees, the contractor is encouraged to obtain cooperation with the unions to increase opportunities for minorities and women. The contractor is required to incorporate an EEO clause into union agreements.

Construction Issues, Continued

Section II.8 deals with the contractor's EEO policy as it pertains to selection of subcontractors, including material suppliers and equipment leasing companies. Contractors are to use "best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees." Furthermore, contractors are required to exercise their best efforts to ensure that subcontractors comply with the EEO requirements.

Section II.9 requires the contractor to prepare records that document compliance with the EEO policy and to retain these records for a period of three years after project completion. These records should include the number of minority, women, and non-minority employees in each work classification on the project, and the progress and effort being made to increase the employment opportunities for minorities and women. The contractor is required to submit an annual EEO report to the State DOT each July, for the duration of the project. If the project contains Training Special Provisions (TSP), this information is also required to be collected and reported.

2. Compliance Oversight

Enforcement responsibilities have been vested with the contracting agency, which ultimately falls on the shoulders of the State DOT project engineer. The project engineer should be cognizant of the contractual requirements discussed above and monitor the contractor for compliance. Noncompliance with the EEO specifications may be considered a breach of contract for which sanctions can be imposed as detailed in ITD's Civil Rights Special Provisions, which are included with every contract. If noncompliance with any provision is even suspected, the project engineer should notify ITD's Civil Rights Contract Compliance Officer who will take the necessary action.

Section III - Nonsegregated Facilities

The intent of the provisions of Section III of FHWA Form-1273 is to ensure that past discriminatory practices for providing separate facilities or prohibiting minorities access to certain facilities are eliminated. Section III, which is also derived from Title VI, applies to contractors, subcontractors, and material suppliers on all Federal-aid contracts and related subcontracts of \$10,000 or more.

By entering into a Federal-aid construction contract, organizations and firms are certifying that they maintain nonsegregated facilities that conform to requirements of 41 CFR 60.1.8. These regulations also require a prime contractor to obtain a similar certification from each subcontractor and supplier, as applicable.

Construction Issues, Continued

B. Potential Title VI Issues and Suggested Action to Address Concerns

1. State Practices

- a. Whether appropriate contract provisions are incorporated in Federal-aid contracts.

Suggested action: Ensure provisions are a part of all prime contracts.

- b. Whether the monitoring/inspection of work results in disparate treatment of protected groups.

Suggested action: Ensure disparate treatment does not exist through day-to-day monitoring and/or process reviews. If problems are noted, take corrective action immediately.

- c. Whether required mitigation measures have been effectively implemented, i.e., safety through construction zones; noise and air impacts; employment and contracting goals, etc.

Suggested action: Follow-up to ensure all commitments are met. Can be verified through on-site inspection, process reviews, feedback from affected parties, etc.

- d. Whether barriers exist in pre-qualification, approval of subcontractors, bonding, and licensing requirements.

Suggested action: Assess whether barriers exist by conducting process reviews, surveying subcontractors, etc. If barriers are identified, take appropriate action to eliminate them.

- e. Whether uniformity exists in the approval of plans changes and supplemental agreements.

Suggested action: Ensure consistency through conduct of process reviews, feedback from contractors, etc.

- f. Whether uniformity exists in the assessment of sanctions, liquidated damages, withholding payments, suspension/termination of contracts, and decertification.

Suggested action: Ensure consistency through conduct of process reviews, etc.

- g. Whether traffic plans (detours) are supportable and do not result in disparate impact on certain groups (without mitigation).

Suggested action: Establish monitoring process to ensure consistent application on all projects.

Construction Issues, Continued

2. Contractor Practices

- a. Whether appropriate contract provisions are incorporated in required subcontracts.

Suggested action: Establish monitoring system to ensure provisions are a part of applicable subcontracts.

- b. Whether the contractor's employees (and applicants for employment) are treated without regard to their race, color, national origin, sex, disability, or age.

Suggested action: Review contractor's records concerning recruitment, promotions, demotions, separations, rates of pay and other compensation, selection for training, etc.

- c. Whether contractors demonstrate equal opportunity when soliciting for subcontractors.

Suggested action: Review contractor's records to assess effort made to solicit bids from qualified DBE subcontractors and subcontractors with meaningful minority and female representation in the workforce.

- d. Whether facilities are nonsegregated.

Suggested action: Through on-site inspection, verify that contractor is not providing separate facilities or prohibiting certain employees from access to facilities.

- e. Whether selection of plant/material source locations are supportable and do not result in disparate impact on certain groups (without mitigation).

Suggested action: Establish monitoring process to ensure consistent application on all projects.

TITLE VI GUIDE GLOSSARY OF TERMS

TERM	DEFINITION
Affirmative Action:	A good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur. Actions aimed at addressing under-representation of minorities and women.
Beneficiary:	An individual and/or entity that directly or indirectly receive an advantage through the operation of a Federal program; however they do not enter into any formal contract or agreement with the Federal government where compliance with Title VI is a condition of receiving the assistance.
Categorical Exclusion	A technical exclusion for projects that do not result in significant environmental impacts. Such projects are not required to prepare environmental reviews.
Disparate Impact	Discrimination which occurs as a result of a neutral procedure or practice, and such practice lacks a "substantial legitimate justification." The focus is on the consequences of a recipient's practices rather than the recipient's intent.
Disparate Treatment	Discrimination which occurs when similarly situated persons are treated differently because of their race, color, national origin, sex, disability, or age and the decision maker was aware of the complainant's race, color, national origin, sex, disability, or age, and decisions were made (at least in part) because of one or more of those factors.
MPO	Metropolitan Planning Organization (considered a subrecipient.)
NEPA	National Environmental Policy Act - Federal law which requires that every federal agency prepare a detailed report evaluating significant environmental impacts of the proposed project as well as those of project alternatives.
Recipient	An individual and/or entity that receives Federal financial assistance and/or operates a program or activity.
SEE	Social, Economic, and Environmental - A process to analyze the SEE impacts and effects must be considered during the Planning process. The goal of the SEE process is to develop a complete understanding of the existing and

**TITLE VI GUIDE
GLOSSARY OF TERMS, CONTINUED**

TERM	DEFINITION
SEE, Continued	future environmental conditions and the possible effects of a proposed project in order to make the best project decision in terms of meeting the intended transportation need, the goals of an area or community, and for protection and enhancement of the environment.
Sovereignty	The inherent right of an Indian Nation to govern all actions within its own jurisdiction based upon traditional systems and laws that arise from the People themselves. Sovereignty includes the right of Native Nations to freely live and develop socially, economically, culturally, spiritually, and politically. The principal attributes of Tribal sovereignty are, in summary: 1) Indian Tribes possess inherent governmental power over all internal affairs, 2) States are precluded from interfering with the Tribes' self-government, and 3) Congress has plenary power to limit Tribal sovereignty and thereby limit the first two attributes.
STIP	State Transportation Improvement Program
Subrecipient	A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
TIP	Transportation Improvement Program